

REMARKS

Claims 1, 2, 5 and 6 are pending. Claims 3 and 4 are newly cancelled. Claims 7-11 have previously been cancelled. Claim 6 has been amended to correct the clarifying language linking formula I to formulae I(a) and I(b) (see previous Amendment dated April 9, 2008). Applicants believe that no new matter has been added nor has the scope of the claims been broadened by any amendment herein.

Section 112 rejections

The Examiner has rejected the claims under 35 U.S.C. 112 contending that there is insufficient antecedent basis for the R₂₆ and R₂₇ definitions in the claims. Additionally, it is alleged that the definitions of R₂₀, R₁₂, and R₁₃ in claim 1 and R_{2c} in claim 6 have insufficient antecedent basis.

In response, Claim 1 has been amended to delete the superfluous definition of R₂₀. Claim 2 has been amended to delete the superfluous definitions of R₁₂, R₁₃, R₁₄, R₁₅, R₁₆ and R₁₇. Claim 6 has been written in independent form and amended to correct the previous clarification of the definition of R_{2a} (see Amendment dated April 9, 2008) which renders the rejection for lack of antecedent basis moot. Applicants believe all the rejections for lack of antecedent basis have been corrected and request withdrawal of the rejection under Section 112 for indefiniteness.

Rejection under 35 U.S.C. §103

The Examiner has re-stated his rejection under 35 U.S.C. 103(a) over Hunt (US 6,982,265) contending that the Hunt compounds are “equivalent” to currently disclosed compounds as they are described by the broadest Hunt genus. The Examiner further alleges that since Hunt broadly discloses methods of treating diseases that are associated with P-38 (amongst others) with Hunt compounds, that this would lead one of skill to create the present invention because “Hunt states that this invention is based on the discovery that certain pyrrolotriazines are inhibitors of protein kinases”.

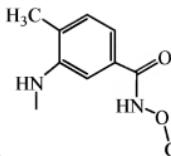
In response to Applicants’ discussion and narrowing of the claims in the Amendment dated April 9th the Examiner contended 1) that Hunt’s broadest genus still

suggested Applicants' invention as Hunt's genus still described compounds disclosed in the present invention (and noted that a compound did not have to be exemplified to be obvious); and 2) that Examples 70, 97, 111, 114, and 119 did not have the claimed structural definition for $-ZR_4R_5$. Applicants traverse.

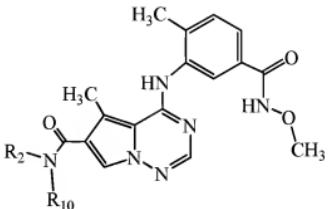
While Applicants agree that a reference does not necessarily have to exemplify compounds in order to be obvious, the MPEP 2144.08 states that “[t]he fact that a claimed species or subgenus is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness.” *See in re Baird*, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994). When citing structural similarity the Examiner is instructed to “consider any teaching to suggestion in the reference of a preferred species or subgenus that is significantly different in structure from the claimed species or subgenus. Such a teaching may weight against selecting the claimed species or subgenus and thus against a determination of obviousness.” It is concluded that “generally, some teaching of a structural similarity will be necessary to suggest selection of the claimed species or subgenus.” *See* MPEP 2144.08,

In his response the Examiner has simply re-stated that the present compounds are within the broad genus of Hunt and has not provided any teaching of the presently claimed subgenus. Hunt does not provide this teaching as there is no description of a subgenus that describes the compounds disclosed in the presently claimed invention. Moreover, as discussed in the April 9, 2008 Amendment, the exemplified Hunt compounds actually “teach away” from the present invention as they have a different subgenus than compounds utilized in the present invention. Accordingly, the present compounds are not “equivalent” to the Hunt compounds and cannot be used to support the obviousness rejection of the present invention.

Secondly, the Examiner contends that none of the Examples 70, 97, 111, 114, and 119 had the claimed structural definition for $-ZR_4R_5$. This is not true as the claims have

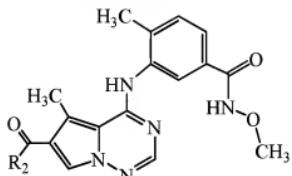


been limited to the group wherein $-ZR_4R_5$ is



preceding Examples have the core groups

or



, it is obvious that the claimed definition for $-ZR_4R_5$ describes all the preceding Examples.

In view of the foregoing, it is requested that the obviousness rejection of the present invention be withdrawn.

Double Patenting Rejections

The Claims have been rejected for nonstatutory obviousness-type double patenting over claims in USPN 6,670,357 and US 7,314,876. Although Applicants disagree that the present compounds are obvious over US 7,314,876, in order to expedite the issuance of this application, please find enclosed a disclaimer of the term if this application over the two cited patent application.

Fees

No fees should be due. However, if it is determined that a fee is due, please charge same to Deposit Account No. 19-3880 in the name of Bristol-Myers Squibb Company.

The Examiner is invited to contact the undersigned by telephone at the number listed below if it is believed that such a call would facilitate the prosecution of this application.

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Date: October 2, 2008